

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|---------------------------------|---|------------------------|
| GARY CLINE; SABRINA BETH CLINE; |) | |
| and STEPHANIE BLANKENSHIP, |) | |
| |) | |
| Plaintiffs, |) | No. 3:15-cv-00275 |
| |) | |
| v. |) | Judge Trauger |
| |) | |
| PUBLIX SUPER MARKETS, INC.; and |) | Magistrate Judge Brown |
| PUBLIX TENNESSEE, LLC, |) | |
| |) | |
| Defendants. |) | |

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND/OR TO STRIKE AFFIRMATIVE DEFENSE**

Plaintiff moves this Court, pursuant to Rule 12(f)(2) and Rule 56 of the Federal Rules of Civil Procedure, to strike and alternatively for partial summary judgment of that portion of Defendants’ affirmative defense No. 6 that states as follows:

“Publix further avers that the negligent acts or omission of Ms. Cline and/or other family members of Landon Wood who failed to comply with medical guidance and advice offered by Landon Wood’s healthcare providers in the years and months preceding Landon Wood’s death proximately caused, or contributed to cause, any damages allegedly suffered by Plaintiffs.”

There is little actual basis to support an affirmative defense, and there is no medical opinion offered by any treating physician or expert witness that Derek Landon Wood died because his family was not compliant with medical advice and/or treatment.

For all of the reasons outlined in Plaintiff’s supporting memorandum, there are no issues of outstanding material fact and the law weighs in favor of this motion striking the affirmative defense.

Respectfully submitted,

By: s/ Edmund J. Schmidt III

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing document has been served upon the following on this 26th day of September, 2016, via e-mail and postage prepaid U.S. Mail:

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